

ESTTA Tracking number: **ESTTA705131**

Filing date: **10/28/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Sweet P's Barbeque & Soul House, LLC		
Entity	limited liability company	Citizenship	Tennessee
Address	4815 Kingston Pike PMB 170 Knoxville, TN 37919 UNITED STATES		

Attorney information	Robert O. Fox Luedeka Neely Group, PC PO Box 1871 Knoxville, TN 37901 UNITED STATES RFox@Luedeka.com Phone:865.546.4305
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Registration Subject to Cancellation

Registration No	4786688	Registration date	08/04/2015
Registrant	Paul Dzubnar 2160 Bayard Avenue St. paul, MN 55116 UNITED STATES		

Goods/Services Subject to Cancellation


Class 043. First Use: 2014/06/02 First Use In Commerce: 2014/06/02 All goods and services in the class are cancelled, namely: Bar and restaurant services
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Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86692033	Application Date	07/14/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	SWEET P'S		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 2006/01/01 First Use In Commerce: 2006/01/01 Restaurant and catering services

Attachments	86692033#TMSN.png(bytes) 7081200-topto-20151028-petition to cancel.pdf(32833 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/robertofox/
Name	Robert O. Fox
Date	10/28/2015

SWEET P'S BARBEQUE & SOUL HOUSE, LLC,)
)
 Petitioner,)
 v.)
)
 PAUL DZUBNAR,)
)
 Respondent.)

1. Petitioner is a limited liability company of the State of Tennessee, and has a business address at 4815 Kingston Pike PMB 170, Knoxville, Tennessee 37919.
2. To the best of Petitioner's knowledge and belief, the name and address of the current alleged owner of the above-mentioned U.S. Trademark Registration No. 4,786,688 (hereinafter "the '688 registration,") for the mark SWEET PEA'S is Paul Dzubnar, an individual citizen of the United States, having an address of 2160 Bayard Avenue, St. Paul, Minnesota 55116 (hereinafter "Respondent").

3. Petitioner is seeking to register its mark SWEET P'S of pending Application Serial No. 86/692033 filed July 14, 2015, 2015, under 15 U.S.C. § 1051(a) (hereinafter collectively "the '033 application") for "restaurant and catering services" (hereinafter "Petitioner's Services"). The '033 application and the mark identified therein are owned by Petitioner.
4. Petitioner has used the mark of its '033 application for or in connection with Petitioner's Services in interstate commerce since at least as early as January 1, 2006.
6. The mark of Petitioner's '033 application has been refused registration on the Principal Register for Petitioner's Services under 15 U.S.C. § 1052(d) on the asserted ground that Petitioner's mark as used for Petitioner's Services so resemble the mark of the '688 registration, said to have been used in commerce since April 2007, for "bar and restaurant services" (hereinafter "Respondent's Services"), as to be likely to cause confusion.
7. The date of first use of the mark of the '688 registration claimed by Respondent for Respondent's Services is years after the date of first use of the mark of the '755 application claimed by Petitioner for Petitioner's Services. Petitioner is therefore the prior user of the mark of its '033 application for Petitioner's Services as against Respondent and Respondent's claimed first use of the mark of the '688 registration.
8. The '688 registration issued on August 14, 2015, and is therefore subject to cancellation herein under at least 15 U.S. C. § 1064(1), by any person who believes he is or will be damaged by the continued existence of the registration.
9. To the extent the Examining Attorney is correct in the refusal to register Petitioner's mark under 15 U.S.C. § 1052(d) based on the alleged confusing similarity of the mark of the '688 registration to Petitioner's mark of its '0335 application, then Petitioner, as the prior user of its marks of its '033 application anywhere and in commerce for its goods, is being damaged by continued registration of the mark of the '688 registration, and is entitled to have the Respondent's '688 registration cancelled pursuant to at least 15

U.S.C. §§ 1052(d) and 1064.

WHEREFOR, Petitioner prays that this Honorable Board, upon consideration of the grounds set forth herein, determine that Petitioner has made out good and sufficient grounds to determine that Petitioner is being and will be damaged by continued registration of the mark of the '688 registration by Respondent, and issue an order that the same be cancelled.

Respectfully submitted,



Robert O. Fox
Registration No. 34,165
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Certificate of Service

This is to certify that a true and correct copy of the foregoing is being served on Registrant, by first class mail, postage prepaid, addressed as follows:

Paul Dzubnar
of 2160 Bayard Avenue
St. Paul, Minnesota 55116



Date: October 28, 2015

Robert O. Fox